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Attorneys for Plaintiffs

RECEIVED
SEP 24 2004
U.S. DISTRICT COURT
DISTRICT OF OREGON

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Heidi Cox, Carol Laning, Christopher Rulien,
and Peter Elkan, (all as heirs of Gunter
Sigmund Elkan),

Case No. 04-1344-KI

Plaintiffs,

COMPLAINT for copyright infringement

v.

JURY TRIAL DEMANDED

HASBRO, INC. and its wholly-owned
subsidiary MILTON BRADLEY COMPANY,

Defendants.

Plaintiffs allege:

PARTIES

1.

Plaintiffs are all living heirs of Gunter Sigmund Elkan, deceased, and are bringing this action in their capacity as heirs and inheritors of the rights of Gunter Sigmund Elkan.

2.

Defendant Hasbro, Inc. is a Rhode Island corporation, engaging in commerce throughout the United States, and actively selling products and doing business in the State of Oregon. Defendant

179099

Milton Bradley Company is now a subsidiary of Hasbro, Inc. and is actively selling products and doing business in the State of Oregon.

JURISDICTION AND VENUE

3.

This is an action seeking damages and injunctive relief for copyright infringement under the Copyright Act of Canada, enforceable in this Court pursuant to the Universal Copyright Convention and the Berne Convention.

4.

This court has original jurisdiction under 28 USC §1331 (federal question) and 28 USC §1338(a) (copyright). Venue in this forum is proper under 28 USC §1391(b) and (c).

5.

This Court has personal jurisdiction over the Defendants by virtue of their actively transacting, doing, and soliciting business in this District.

COUNT ONE

COPYRIGHT INFRINGEMENT

6.

Plaintiffs re-allege paragraphs 1 - 5 above.

7.

On June 1, 1948, Gunter Sigmund Elkan obtained, preserved and perfected a copyright to the game "Strategy" with the Copyright Board of Canada, a copy of which is attached to this Complaint as Exhibit A. Since June 1, 1948, Gunter Sigmund Elkan and his heirs have been and still are the sole proprietors of all rights, title and interest in and to the copyright of said game.

8.

The game "Strategy" contains rules and a game-board configuration which were wholly original to Gunter Sigmund Elkan.

9.

At about the beginning of July 1948, Gunter Sigmund Elkan submitted his copyrighted game "Strategy" to the Milton Bradley Company (now a subsidiary of Hasbro, Inc.) for consideration for licensing and marketing purposes. (Exhibit B) On or about July 20, 1948, Milton-Bradley Company rejected the idea for the game "Strategy." (Exhibit C)

10.

Beginning in about 1961, Milton Bradley Company began to market its game "Stratego," and has marketed such game ever since. In September 1984, Defendant Milton Bradley Company was acquired by Defendant Hasbro, Inc.

11.

The rules and game-board configurations of "Strategy" and "Stratego" are essentially identical, with only extremely minor differences in game-piece names and board configuration. "Stratego" is a copy of "Strategy."

12.

Beginning in 1961 and thereafter, Defendant Milton Bradley Company has infringed upon, and continues to infringe upon, the Plaintiffs' copyright by selling its game "Stratego." In doing so, Defendants have violated Plaintiffs' exclusive rights of reproduction and distribution to others. Defendants' actions constitute infringement of Plaintiffs' copyright and exclusive rights under copyright.

13.

Plaintiffs are informed and believe that the foregoing acts of infringement have been wilful and intentional, in disregard of and with indifference to the rights of the Plaintiffs.

14.

As a result of Defendants' infringement of Plaintiffs' copyright and exclusive rights under copyright, Plaintiffs are entitled to damages pursuant to 17 USC §504. Plaintiffs are further entitled to their attorneys' fees and costs pursuant to 17 USC §505.

15.

Defendants' conduct is causing, and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 USC §§502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendants from further infringing on Plaintiffs' copyright, and ordering Defendant to destroy all copies of the game "Stratego" made in violation of Plaintiffs' exclusive rights.

16.

Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

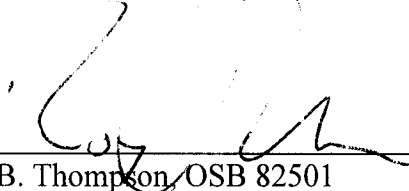
1. For an injunction providing: "Defendants shall be and hereby are enjoined from directly or indirectly infringing upon Plaintiffs' rights under international, federal, or state law in the copyrighted product, whether now in existence or later created, that is owned or controlled by Plaintiffs. Defendants shall also destroy all copies of infringing products in their

possession or control."

2. For damages for infringement upon Plaintiffs' copyright pursuant to 17 USC §504.
3. For Plaintiffs' costs in this action.
4. For Plaintiffs' reasonable attorneys' fees incurred herein.
5. For such other and further relief as the Court may deem just and proper.

DATED: 9/22, 2004

THOMPSON ♦ BOGRÁN, P.C.



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File No.-45971

IN VIRTUE OF THE COPYRIGHT ACT

Thereby certify that the **COPYRIGHT** *in the* published *work*
entitled **"STRATEGY"**
by **Gunter Sigmund Elkan**
of **Vancouver, British Columbia,**
was registered under **Serial No.** **78967,** *in* **REGISTER OF**
COPYRIGHTS NO. **20,** *kept at the Copyright Office, on the*
1st *day of* **June,** **1948,**
in the name of **Gunter Sigmund Elkan** *of* **Vancouver, British Columbia**

First publication of this work was made **May 25th, 1948, in**
Vancouver, British Columbia, Canada.

In Testimony Whereof

*I have hereunto set my hand, and caused
the Seal of the Copyright Office to be hereunto affixed at
the City of Ottawa, in the Dominion of Canada,
this first day of June, in
the year of Our Lord, one thousand nine hundred
and forty-eight.*

EXHIBIT A
PAGE 1 OF 5

2.11.11.08

PAGE 10

CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT IN A BOOK PUBLISHED IN THE UNITED STATES OF AMERICA

REGISTRATION NO.

CLASS

CMA A 85858

A

THIS IS TO CERTIFY that the statements set forth on this page for the book herein named which was published in the United States on May 25th, 1948 have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

NOT VALID WITHOUT
COPYRIGHT OFFICE
IMPRESSION SEAL

Sam B. Warner
Registrar of Copyrights

1. COPYRIGHT OWNER OR OWNERS (Give full names and addresses)

Gunter Sigmund ELKAN, 589 Burrard St., Vancouver, British Columbia,
Canada.

2. TITLE OF BOOK "Strategy"

(Retail price, \$.....)

3. AUTHORS (Editors, Translators, etc.) Full name (including full middle name), pseudonym (if any), and year of birth and, if dead, year of death, are requested for cataloging purposes.

(a) Name Gunter Sigmund ELKAN Citizenship Canadian
(First) (Middle) (Last) (Country)
Domicile 589 Burrard St., Vancouver, B. C. Birth 1916. Death _____
(Address) (Year) (Year)

(b) Name _____ Citizenship _____
(First) (Middle) (Last) (Country)
Domicile _____ Birth _____ Death _____
(Address) (Year) (Year)

(c) Name _____ Citizenship _____
(First) (Middle) (Last) (Country)
Domicile _____ Birth _____ Death _____
(Address) (Year) (Year)

4. (a) Check one of the following ONLY if your book is:

- ☐ A new edition of a previously published book.
☐ A translation.
☐ A serial republished in book form with new matter.
☐ United States edition of a book first published abroad on (Date) _____
 in the English language and registered under Ad Interim No. _____
 (Punish if known)

(b) If checked above give title and author of original publication (if different from present book) and a brief statement of the nature of the new matter in this edition:

SEND CERTIFICATE, REFUND (IF ANY), AND OTHER COMMUNICATIONS TO:

Name Fetherstonhaugh & Co.,

Address 305 Hall Building,
(Number and Street)
Vancouver, British Columbia, Canada.
(City) (Zone) (State)

DATES OF RECEIPT IN COPYRIGHT OFFICE

APPLICATION AND AFFIDAVIT

JUN -1 1948

TWO COPIES OF BOOK

JUN -1 1948

EXHIBIT

A

PAGE

2 OF 5

2. TITLE OF BOOK "Strategy"

(Retail price, \$.....)

3. AUTHORS (Editors, Translators, etc.) Full name (including full middle name), pseudonym (if any), and year of birth and, if dead, year of death, are requested for cataloging purposes.

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(Address) (Year) (Year)(b) Name Citizenship
(First) (Middle) (Last) (Country)Domicile Birth Death
(Address) (Year) (Year)(c) Name Citizenship
(First) (Middle) (Last) (Country)Domicile Birth Death
(Address) (Year) (Year)

4. (a) Check one of the following ONLY if your book is:

☐ A new edition of a previously published book.☐ A translation.☐ A serial republished in book form with new matter.☐ United States edition of a book first published abroad on (Date).....in the English language and registered under Ad Interim No.

(Furnish if known)

(b) If checked above give title and author of original publication (if different from present book) and a brief statement of the nature of the new matter in this edition:

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JUN -1 1948

EXHIBIT APAGE 3 OF 5

(4)

It would be wise for that player to attack the enemy General with his own, thereby eliminating both Generals and the danger of having his General captured by the enemy Spy.

STRATAGEM:

It is important to watch the movements of the opponent. Once an opposing figure has been identified, keep track of it until you are able to dispose of it by bringing up a figure of a superior rank. Don't be too obvious with your moves. It is wise to have several figures moving about, thereby trying to confuse the opponent. Look out for figures which your contestant never moves, as they may prove to be mines or the flag. Do not wait to be attacked. Attack yourself!

GUR BROTHERS & WILLIAMS, INC.  FELLINGHAM, WASHINGTON

PRINTED IN U.S.A.

COPYRIGHT, 1948, IN CANADA AND U.S.A., BY G. R. ELKAN

"STRATEGY"



This is a game of skill, strategy, daring and memory, which appeals to "boys" of any age from 11 to 70. Two contestants set up their Armies facing each other on a board, 10 squares wide and 10 squares deep. Each Army consists of the following figures:

1 Flag	(Can be taken by any figure from Spy up)
4 Mines	(Can only be taken by Engineers)
1 Spy	(Can be taken by any figure but General)
5 Scouts	Value 2
4 Engineers	Value 3
4 Corporals	Value 4
3 Sergeants	Value 5
3 Lieutenants	Value 6
2 Captains	Value 7
2 Majors	Value 8
1 General	Value 9

STARTING POSITION:

The two players toss for the first move. Then each player places his respective Army on each square of his first 3 rows. The position of the individual figures is left unknown to the opponent, as only the plain back faces him.

EXHIBIT A

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②

AIM:

The Flag, symbolizing "Army Headquarters," is the key to the game. It is the players' aim to get the opponent's flag first, thus becoming the victor. It is therefore important for both players to figure out a strategical position which will provide an easy defense of the flag and will give, at the same time, enough aggressive power to penetrate the opposing lines.

MOVEMENT:

The players move one figure in turn. The flag and the four mines cannot be moved during the whole game. All other figures, from General (with 9 points) to the Spy (with no points), can be moved one square at a time. They can go forward, sideways, and backwards; but must not go diagonally. They cannot jump any other figures.

EXCEPTION: The Scout (each player has 5) is equipped for faster movement and is therefore the only one which can move as many squares in one direction (forward, backwards, or sideways) other figure or go diagonally. The Scout is very important to unexpectedly test opposing figures or help catch the Spy.

ATTACK:

If it is your move, and the next square places you back to back or side by side with one of your opponent's figures, you may decide to attack. You say: "Attack!", pointing to the figure you attack (as you may sometimes have an opponent's figure on each side of yours). Your opponent will then have to declare the rank of his man, after which you mention the rank of yours. If your figure is of a higher rank (See value chart above), you win

③

this attack and remove the opposing figure from the board. If you wish, you can then move to the newly vacated square by saying: "I'll take his place!", all in the same move. If the attacked figure is of the same rank, both yours and the opponent's figures must be removed from the board. If you attack a higher rank, your figure must leave the board, but your opponent cannot take this place until it is his move. However, the players do not have to attack each other when two opposing figures are back to back or side to side. It is impossible to attack each other from behind.

MINES and ENGINEERS: If any rank, or the spy, attacks a mine, he is wounded and moved from the field, with the exception of the Engineer who is especially equipped to take care of such traps. If he attacks and strikes a mine, the mine is taken off the board and the Engineer can occupy its square if the player wishes. It is wise for the attacker to keep the Engineers in the background until a mine has been spotted. If the opponent has his flag completely surrounded by mines (which has advantages and disadvantages) and you have made use of them, you cannot bring your army to the flag and therefore cannot win the game.

SPY: The Spy is the most vulnerable figure on the board (with the exception of the flag), as he has no official rank or value and can be taken by any rank, from the Scout up to the Major. However, he is the only one who can capture the opposing General and makes, therefore, an important figure on the board. It is wise to keep the Spy well protected at all times and in the background until the enemy General has been located. Should the Spy be lost to one player before he ever had a chance to tackle the opposing General.

MILTON BRADLEY COMPANY

SPRINGFIELD 2 MASSACHUSETTS

July 7, 1948

Mr. G. S. Elkan
589 Burrard Street
Vancouver, British Columbia
CANADA

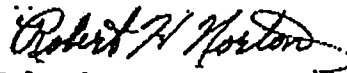
Dear Mr. Elkan:

This is to acknowledge receipt of your
game "Strategy" to our Research Committee.

After they have completed their study of
this item, we will be glad to advise you of their
decision.

Very truly yours,

MILTON BRADLEY COMPANY



Robert H. Norton
Chairman, Research Committee

RHN:scg

EXHIBIT B

PAGE 1 OF 1

Copy

RHN:EB

July 20, 1948

Mr. Fred Elkan
610 West 139th St.
New York 31, New York

Dear Mr. Elkan:

We are sending you under separate cover the game of "Strategy" which your son left with us for consideration by our Research Committee.

We have advised Mr. Elkan that although the game has merit and plays well it has been rejected on the basis

HILTON WICKELMAN COMPANY

Robert H. Norton
Chairman, Research Committee

Sep. Cov.

EXHIBIT C
PAGE 1 OF 1